

Title 10: COMMERCE AND TRADE
Chapter 201: MONOPOLIES AND PROFITEERING

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Maine Revised Statutes
Title 10: COMMERCE AND TRADE
Chapter 201: MONOPOLIES AND PROFITEERING

§1101. CONTRACTS IN RESTRAINT OF TRADE

Every contract, combination in the form of trusts or otherwise, or conspiracy, in restraint of trade or commerce in this State is declared to be illegal. Whoever makes any such contract or engages in any such combination or conspiracy is guilty of a Class C crime. [2003, c. 46, §1 (AMD).]

SECTION HISTORY

1973, c. 489, §1 (AMD). 1977, c. 175, §1 (AMD). 2003, c. 46, §1 (AMD).

§1102. CONSPIRACIES TO MONOPOLIZE TRADE

Whoever shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce of this State shall be guilty of a Class C crime. [1977, c. 175, §2 (RPR).]

SECTION HISTORY

1977, c. 175, §2 (RPR).

§1102-A. ACQUISITION OF ASSETS OF PERSON ENGAGED IN COMMERCE WHICH TENDS TO CREATE A MONOPOLY

No person engaged in commerce in this State may acquire, directly or indirectly, the whole or any part of the stock or other share capital, or the whole of any part of the assets of another person also engaged in commerce in this State, where in any line of commerce or any activity affecting commerce in any section of this State, the effect of the acquisition or use of that share capital, or the acquisition of those assets, may be substantially to lessen competition or tend to create a monopoly. [1983, c. 340, §1 (NEW).]

This section does not apply to persons purchasing these stocks solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition, nor may anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of those subsidiary corporations, if the effect of that formation is not to substantially lessen competition. [1983, c. 340, §1 (NEW).]

This section does not apply to the acquisition of stock, share capital or assets of a public utility when the acquisition has been approved by the Public Utilities Commission. [1983, c. 340, §1 (NEW).]

Any financial institution subject to the provisions of Title 9-B is exempt from this section. [1983, c. 340, §1 (NEW).]

SECTION HISTORY

1983, c. 340, §1 (NEW).

§1103. IMMUNITY OF WITNESSES FROM PROSECUTION
(REPEALED)

SECTION HISTORY

1991, c. 137, §1 (RP).

§1104. RIGHT OF ACTION AND DAMAGES

1. Right of action and damages. Any person, including the State or any political subdivision of the State, injured directly or indirectly in its business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by section 1101, 1102 or 1102-A, may sue for the injury in a civil action. If the court finds for the plaintiff, the plaintiff shall recover 3 times the amount of the damages sustained and cost of suit, including necessary and reasonable investigative costs, reasonable experts' fees and reasonable attorney's fees.

[1989, c. 367, (AMD) .]

2. Injunction. The Attorney General may institute proceedings in equity to prevent and restrain violations of sections 1101, 1102 and 1102-A.

A. These proceedings may be by way of petitions setting forth the case and praying that the violation shall be enjoined or otherwise prohibited. [1987, c. 60, §1 (NEW) .]

B. The action may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. [2011, c. 559, Pt. A, §10 (RPR) .]

C. Pending the petition and before final decree, the court may at any time make such temporary restraining order or prohibition as considered just under the circumstances. [1987, c. 60, §1 (NEW) .]

D. Any person who violates the terms of an injunction issued under this section must forfeit and pay to the State, to be applied in carrying out this chapter, a civil penalty of not more than \$50,000 for each violation. [1991, c. 137, §2 (NEW) .]

[2011, c. 559, Pt. A, §10 (AMD) .]

3. Civil penalty. Each course of conduct that constitutes a violation of section 1101 or 1102 is a civil violation for which a civil penalty of not more than \$100,000 for each defendant may be adjudged.

A. In any action initiated by the Attorney General pursuant to this section to prevent and restrain violations of sections 1101 and 1102, the Attorney General may include an action to recover civil penalties by each defendant for each course of conduct alleged. [1987, c. 60, §1 (NEW) .]

B. An action to recover a civil penalty from a defendant under this section bars a criminal prosecution pursuant to section 1101 or 1102 against that defendant for the same course of conduct on which the action to recover the civil penalty is based. [1991, c. 137, §3 (AMD) .]

C. A criminal prosecution against a defendant pursuant to section 1101 or 1102 bars any action to recover a civil penalty under this section from that defendant for the same course of conduct on which the criminal prosecution is based. [1991, c. 137, §3 (AMD) .]

[1991, c. 137, §3 (AMD) .]

4. Recovery of damages, costs and fees for antitrust violations from any political subdivision official or employee of a political subdivision acting in an official capacity. No damages, interest on damages, costs or attorneys fees may be recovered under this chapter from any political subdivision, as defined in Title 14, section 8102, subsection 3, or official or employee of a political subdivision acting in an official capacity.

[1987, c. 60, §1 (NEW) .]

5. Recovery of damages, costs and fees for antitrust violations on claim against person based on official action directed by political subdivision, or official or employee of a political subdivision acting in an official capacity. No damages, interest on damages, costs or attorneys fees may be recovered under

this chapter in any claim against a person based on any official action directed by a political subdivision, as defined in Title 14, section 8102, subsection 3, or official or employee of a political subdivision acting in an official capacity.

[1987, c. 60, §1 (NEW) .]

SECTION HISTORY

1977, c. 175, §3 (RPR). 1983, c. 340, §2 (AMD). 1985, c. 349, (AMD).
1987, c. 60, §1 (RPR). 1989, c. 367, (AMD). 1991, c. 137, §§2,3 (AMD).
2011, c. 559, Pt. A, §10 (AMD).

§1105. PROFITEERING IN NECESSITIES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abnormal market disruption" means a significant disruption to the production, distribution, supply, sale or availability of a commodity or commodities that:

- (1) Is caused by an event such as a natural or man-made emergency or disaster, whether local or remote; and
- (2) Causes ordinary competitive market forces to cease to function normally. [2005, c. 580, §1 (NEW) .]

B. "Cost" means the expense associated with the acquisition, production, distribution or sale of necessities and may include, among other things, replacement costs, taxes and transportation costs. [2005, c. 580, §1 (NEW) .]

C. "Necessities" includes food for human or animal consumption; pharmaceutical products, including prescription medications; wearing apparel; shoes; building materials; gas and electricity for light, heat and power; ice; fuel of all kinds; and fertilizer and fertilizer ingredients; together with tools, utensils, implements, machinery and equipment required for the actual production or manufacture of the same. "Necessities" includes any other vital or necessary good or service except those:

- (1) Subject to continuous maximum price regulation under the provisions of any state or federal law;
- (2) As to which the State's authority is preempted; or
- (3) Furnished or provided by:
 - (a) Insurers; or
 - (b) Nonprofit hospitals, medical service organizations or health maintenance organizations authorized to transact business within the State pursuant to Title 24 and Title 24-A. [2005, c. 580, §1 (NEW) .]

D. "Unconscionable price" means a price that is actionable under this section. There is a rebuttable presumption that a price is unconscionable when it exceeds by more than 15% the sum of:

- (1) The price at which similar goods or services were offered for sale or sold by that person immediately prior to the beginning date of the abnormal market disruption. If that person did not offer such goods or services immediately prior to the abnormal market disruption, then the price is the price at which similar goods or services were offered for sale or sold by another person similarly situated prior to the abnormal market disruption; and
- (2) The increased cost calculated according to the method used by that person prior to the abnormal market disruption. [2005, c. 580, §1 (NEW) .]

[2005, c. 580, §1 (NEW) .]

2. Declaration. Whenever it appears upon due inquiry and consultation with the Attorney General that an abnormal market disruption exists or that there is a substantial likelihood that an abnormal market disruption is imminent, the Governor may, in the Governor's sole discretion and after considering whether the declaration of an abnormal market disruption itself will disrupt supplies for affected necessities, declare an abnormal market disruption.

A. A declaration made under this subsection must specify:

- (1) The beginning date of the abnormal market disruption;
- (2) The particular necessity, necessities or categories of necessities that are affected by the abnormal market disruption and made subject to the provisions of subsections 3 and 4; and
- (3) The levels of trade or commerce that are affected by the abnormal market disruption and made subject to the provisions of subsections 3 and 4. [2005, c. 580, §1 (NEW).]

B. A declaration of abnormal market disruption under this subsection expires when the Governor declares it expired or 60 days from the date of its issuance, whichever is sooner. The declaration of abnormal market disruption may be modified by the Governor at any time. [2005, c. 580, §1 (NEW).]

C. The Governor shall publish decisions under this subsection in a manner reasonably calculated to give affected persons adequate notice. [2005, c. 580, §1 (NEW).]

D. Any person may petition the Governor regarding the Governor's decisions under this subsection. [2005, c. 580, §1 (NEW).]

[2005, c. 580, §1 (NEW).]

3. Profiteering prohibited. After the Governor has declared an abnormal market disruption and before the declaration of the abnormal market disruption expires, a person may not sell or offer for sale necessities at an unconscionable price.

[2005, c. 580, §1 (NEW).]

4. Civil violation. A violation of subsection 3 is a civil violation that constitutes and may be prosecuted as an unfair act or practice in the conduct of trade or commerce pursuant to Title 5, section 207, except that the provisions of Title 5, section 213 do not apply. The declaration of an abnormal market disruption creates a rebuttable presumption that the disruption occurred and existed from the beginning date in the declaration to the date of its expiration.

[2005, c. 580, §1 (NEW).]

SECTION HISTORY

1979, c. 541, §A91 (AMD). 2005, c. 580, §1 (RPR).

§1106. PROFITEERING IN RENTS

Whoever demands or collects an unreasonable or unjust rent or charge, taking into due consideration the actual market value of the property at the time, with a fair return thereon, or imposes an unreasonable or unjust term or condition, for the occupancy of a mobile home park lot or of any building or any part thereof, rented or hired for dwelling purposes, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both. [1983, c. 148, (AMD).]

SECTION HISTORY

1983, c. 148, (AMD).

§1107. INVESTIGATION BY ATTORNEY GENERAL

The Attorney General upon the Attorney General's own initiative or upon petition of 50 or more citizens of this State, shall investigate all seeming violations of sections 1102-A and 1105 to 1107, all contracts, combinations or conspiracies in restraint of trade or commerce, and all monopolies, and may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General relating to any such matter under investigation. The summons must be served in the same manner as summons for witnesses in criminal cases, and all provisions of law relating thereto apply to summonses issued under this section so far as they are applicable. All investigations or hearings thereunder or connected therewith to which witnesses are summoned or called upon to testify or to produce books, records or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition it must be held in the county in which the petitioners reside. The expense of such investigation must be paid from the appropriation provided by Title 5, section 203. [1991, c. 137, §4 (AMD).]

If, upon investigation, it appears to the Attorney General that the laws of this State, including sections 1102-A or 1105 to 1107, have been violated in any respect, the Attorney General shall prosecute the guilty parties and present all available information bearing upon such apparent violation to the proper prosecuting officer of the United States. [1991, c. 137, §4 (AMD).]

Any Justice of the Superior Court may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony, before the Attorney General in the same manner and to the same extent as before the Superior Court. Any failure to obey such order may be punishable by such court as a contempt. [1991, c. 137, §4 (AMD).]

SECTION HISTORY

1977, c. 175, §4 (AMD). 1991, c. 137, §4 (AMD).

§1108. FINAL JUDGMENT OR DECREE AS PRIMA FACIE EVIDENCE

A final judgment or decree hereafter rendered in any civil or criminal proceeding brought by or on behalf of the State under the antitrust laws to the effect that a defendant has violated these laws shall be prima facie evidence against the defendant in any action or proceeding brought by any party against that defendant under such laws as to matters respecting which that judgment or decree would be an estoppel as between the parties thereto; provided that this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section may be construed to impose any limitation on the application of collateral estoppel. [1983, c. 340, §3 (NEW).]

SECTION HISTORY

1983, c. 340, §3 (NEW).

§1109. ACQUISITION OF GASOLINE AND HEATING OIL ASSETS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Gasoline sales" means the retail sale of internal combustion fuel for motor vehicles as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §13 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

B. "Heating oil sales" means the retail sale of #2 fuel oil used for heating residential, industrial or commercial space or water. [1991, c. 488, (NEW).]

[1995, c. 65, Pt. A, §13 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

2. Prohibition. A person may not acquire, directly or indirectly, from a business engaged in gasoline sales or heating oil sales in this State, without prior notice as required under subsection 3:

A. Controlling stock; or [1989, c. 750, (NEW).]

B. Substantial assets that include those used in gasoline sales or heating oil sales. [1991, c. 488, (AMD).]

[1991, c. 488, (AMD) .]

3. Report. The person acquiring stock or assets under subsection 2 shall provide notice of this acquisition to the Department of the Attorney General at least 30 days prior to the date of acquisition. That period may be shortened with the consent of the Attorney General.

[1991, c. 488, (AMD) .]

4. Confidentiality. Information received by the Department of the Attorney General as a result of this reporting requirement is confidential.

[1993, c. 719, §2 (AMD); 1993, c. 719, §12 (AFF) .]

5. Penalty. Violation of this section is a civil violation for which a civil penalty not to exceed \$10,000 may be assessed.

[1989, c. 750, (NEW) .]

SECTION HISTORY

1989, c. 750, (NEW). 1991, c. 488, (AMD). 1993, c. 719, §2 (AMD).
1993, c. 719, §12 (AFF). 1995, c. 65, §A13 (AMD). 1995, c. 65,
§§A153,C15 (AFF).

§1110. REQUIREMENTS FOR PRICE PROTECTION AND PREPAID CONTRACTS

1. Contract and solicitation requirements. A contract for the retail sale of home heating oil, kerosene or liquefied petroleum gas that offers a guaranteed price plan, including a prepaid contract and any other similar term, must be in writing and the terms and conditions of the price plan must be disclosed. The disclosure of terms and conditions must be in plain language, must immediately follow the language concerning the price or service that could be affected and must be printed in no less than 12-point boldface type of uniform font. A solicitation for the retail sale of home heating oil, kerosene or liquefied petroleum gas that offers a guaranteed price plan that could become a contract upon a response from a consumer, including a prepaid contract and any other similar term, must be in writing and the terms and conditions of that offer must be disclosed in plain language.

[2005, c. 632, §1 (NEW) .]

1-A. Registration. A home heating oil, kerosene or liquefied petroleum gas dealer who offers prepaid contracts under this section shall register the dealer's intent to offer such contracts with the Commissioner of Professional and Financial Regulation by June 30th of each year. Registration must be on a form provided by the commissioner, accompanied by a fee of \$100. Fees received under this subsection must be used by the commissioner to administer this section. Any balance of these funds does not lapse but must be carried forward to be expended for the same purpose in the following fiscal year.

[2011, c. 574, §1 (NEW) .]

1-B. Report. A home heating oil, kerosene or liquefied petroleum gas dealer who offers prepaid contracts under this section shall file an annual report with the Commissioner of Professional and Financial Regulation by October 31st of each year demonstrating how the dealer has satisfied the requirements of this section, including how the prepaid contracts are secured. The report must be made on a form provided by the commissioner. The form must conspicuously bear the warning that making a false statement on the form is a Class D crime under Title 17-A, section 453. The report must be signed by the dealer. If the dealer is a corporation, the report must be signed by either the president or an officer of the corporation and must include a list of all of the members of the board of directors of the corporation. The commissioner may not charge a fee for the form or for filing the report.

[2011, c. 574, §1 (NEW) .]

2. Security for prepaid contracts required; options. A home heating oil, kerosene or liquefied petroleum gas dealer may not enter into a prepaid contract to provide home heating oil, kerosene or liquefied petroleum gas to a consumer unless that dealer has obtained and maintains in accordance with subsection 3 any one of the following:

A. Heating oil, kerosene or liquefied petroleum gas contracts or other similar commitments that allow the dealer to purchase, at a fixed price, heating oil, kerosene or liquefied petroleum gas in an amount not less than 75% of the maximum number of gallons that the dealer is committed to deliver pursuant to all prepaid contracts entered into by the dealer; [2005, c. 632, §1 (NEW) .]

B. A surety bond in an amount not less than 50% of the total amount of funds paid to the dealer by consumers pursuant to all prepaid heating oil, kerosene or liquefied petroleum gas contracts entered into by the dealer; or [2005, c. 632, §1 (NEW) .]

C. A letter of credit in an amount not less than 100% of the total amount of funds paid to the dealer by consumers pursuant to all prepaid heating oil, kerosene or liquefied petroleum gas contracts entered into by the dealer. [2005, c. 632, §1 (NEW) .]

[2005, c. 632, §1 (NEW) .]

3. Maintenance of security. A dealer shall maintain the amount of futures contracts or other similar commitments, the amount of the surety bond or the letter of credit required by subsection 2 for the period of time for which the prepaid home heating oil, kerosene or liquefied petroleum gas contracts are effective, except that the amount of the futures contracts or surety bond may be reduced during such period of time to reflect any amount of home heating oil, kerosene or liquefied petroleum gas already delivered to and paid for by the consumer.

[2005, c. 632, §1 (NEW) .]

4. Disclosure; additional contract requirements. A prepaid home heating oil, kerosene or liquefied petroleum gas contract must indicate:

A. The amount of funds paid by the consumer to the dealer under the contract; [2005, c. 632, §1 (NEW) .]

B. The maximum number of gallons of home heating oil, kerosene or liquefied petroleum gas committed by the dealer for delivery to the consumer pursuant to the contract; and [2005, c. 632, §1 (NEW) .]

C. That the performance of the prepaid contract is secured by one of the options set forth in subsection 2. [2005, c. 632, §1 (NEW) .]

[2005, c. 632, §1 (NEW) .]

5. Reimbursement provision required. A prepaid home heating oil, kerosene or liquefied petroleum gas contract must provide that the contract price of any undelivered home heating oil, kerosene or liquefied petroleum gas owed to the consumer under the contract at the end date of the contract must be reimbursed to the consumer not later than 30 days after the end date of the contract unless the parties to the contract agree otherwise.

[2005, c. 632, §1 (NEW) .]

6. Enforcement. The Commissioner of Professional and Financial Regulation shall refer to the Attorney General for investigation any dealer that has filed a registration form under subsection 1-A and has failed to file a report demonstrating how the contracts are secured pursuant to subsection 1-B.

[2011, c. 574, §2 (NEW) .]

7. Prosecution. The Attorney General may prosecute a person making a false statement on the report required by subsection 1-B for unsworn falsification under Title 17-A, section 453 and may prosecute failure to file the report required by subsection 1-B as an unfair trade practice.

[2011, c. 574, §2 (NEW) .]

8. Unfair trade practice. A violation of any of the requirements of this section is a violation of the Maine Unfair Trade Practices Act.

[2011, c. 574, §2 (NEW) .]

9. Rules. The Commissioner of Professional and Financial Regulation may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2011, c. 574, §2 (NEW) .]

SECTION HISTORY

2005, c. 632, §1 (NEW). 2011, c. 574, §§1, 2 (AMD).

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